

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Joyner offered the following:

2

3 **Substitute Amendment for Amendment (336809) (with title**  
4 **amendment)**

5 Remove lines 37-39 and insert:

6 Section 2. Effective July 1, 2005, section 925.11, Florida  
7 Statutes, is amended to read:

8 925.11 Postsentencing DNA testing.--

9 (1) Petition for examination.--

10 (a) A person who is under a sentence of imprisonment or  
11 death ~~has been tried and found guilty of committing a crime and~~  
12 ~~has been sentenced by a court established by the laws of this~~  
13 ~~state~~ may petition the ~~that~~ court to order the examination of  
14 physical evidence collected at the time of the investigation of  
15 the crime for which he or she has been sentenced that ~~which~~ may

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16 contain DNA (deoxyribonucleic acid) and ~~which~~ would exonerate  
17 that person or mitigate the sentence that person received.

18 ~~(b) Except as provided in subparagraph 2., a petition for~~  
19 ~~postsentencing DNA testing may be filed or considered:~~

20 ~~1. Within 4 years following the date that the judgment and~~  
21 ~~sentence in the case becomes final if no direct appeal is taken,~~  
22 ~~within 4 years following the date that the conviction is~~  
23 ~~affirmed on direct appeal if an appeal is taken, within 4 years~~  
24 ~~following the date that collateral counsel is appointed or~~  
25 ~~retained subsequent to the conviction being affirmed on direct~~  
26 ~~appeal in a capital case, or by October 1, 2005, whichever~~  
27 ~~occurs later; or~~

28 ~~2. At any time if the facts on which the petition is~~  
29 ~~predicated were unknown to the petitioner or the petitioner's~~  
30 ~~attorney and could not have been ascertained by the exercise of~~  
31 ~~due diligence.~~

32 (2) Method for seeking postsentencing DNA testing.--

33 (a) The petition for postsentencing DNA testing must be  
34 made under oath by the sentenced defendant and must include the  
35 following:

36 1. A statement of the facts relied on in support of the  
37 petition, including a description of the physical evidence  
38 containing DNA to be tested and, if known, the present location  
39 or the last known location of the evidence and how it was  
40 originally obtained.†

41 2. A statement that the evidence was not previously tested  
42 for DNA or a statement that the sentenced defendant is

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43 requesting DNA testing using a new method or technology that is  
44 substantially more probative than the prior DNA testing. ~~the~~  
45 ~~results of any previous DNA testing were inconclusive and that~~  
46 ~~subsequent scientific developments in DNA testing techniques~~  
47 ~~would likely produce a definitive result;~~

48 3. A statement that the sentenced defendant is innocent  
49 and how the DNA testing requested by the petition will exonerate  
50 the defendant of the crime for which the defendant was sentenced  
51 or will mitigate the sentence received by the defendant for that  
52 crime. ~~;~~

53 4. If a trial was conducted, a statement that  
54 identification of the defendant was ~~is~~ a genuinely disputed  
55 issue in the trial. ~~ease, and why it is an issue;~~

56 5. Any other facts relevant to the petition. ~~;~~ ~~and~~

57 6. A certificate that a copy of the petition has been  
58 served on the prosecuting authority.

59 (b) Upon receiving the petition, the clerk of the court  
60 shall file it and deliver the court file to the assigned judge.

61 (c) The court shall review the petition and deny it if it  
62 is insufficient. If the petition is sufficient, the prosecuting  
63 authority shall be ordered to respond to the petition within 30  
64 days. The court shall direct the prosecuting authority to take  
65 measures and notify all relevant entities to preserve the  
66 specific evidence relating to a petition under subsection (1).

67 (d) Upon receiving the response of the prosecuting  
68 authority, the court shall review the response and enter an

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69 order on the merits of the petition or set the petition for  
70 hearing.

71 (e) Counsel may be appointed to assist the sentenced  
72 defendant if the petition proceeds to a hearing and if the court  
73 determines that the assistance of counsel is necessary and makes  
74 the requisite finding of indigency.

75 (f) The court shall make the following findings when  
76 ruling on the petition:

77 1. Whether the sentenced defendant has shown that the  
78 physical evidence that may contain DNA still exists.~~+~~

79 2. Whether the results of DNA testing of that physical  
80 evidence would be admissible at trial and whether there exists  
81 reliable proof to establish that the evidence has not been  
82 materially altered and would be admissible at a future hearing.~~+~~  
83 ~~and~~

84 3. Whether there is a reasonable probability that the  
85 sentenced defendant would have been acquitted or would have  
86 received a lesser sentence if the DNA evidence had been admitted  
87 at trial.

88 (g) If the court orders DNA testing of the physical  
89 evidence, the cost of such testing may be assessed against the  
90 sentenced defendant unless he or she is indigent. If the  
91 sentenced defendant is indigent, the state shall bear the cost  
92 of the DNA testing ordered by the court.

93 (h) Any DNA testing ordered by the court shall be carried  
94 out by the Department of Law Enforcement or its designee, as  
95 provided in s. 943.3251.

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96 (i) The results of the DNA testing ordered by the court  
97 shall be provided to the court, the sentenced defendant, and the  
98 prosecuting authority. The prosecuting authority shall enter any  
99 DNA profile found into the National DNA Index System. If the DNA  
100 test results exclude the petitioner, then the petitioner's DNA  
101 reference sample must be destroyed.

102 (3) Right to appeal; rehearing.--

103 (a) An appeal from the court's order on the petition for  
104 postsentencing DNA testing may be taken by any adversely  
105 affected party.

106 (b) An order denying relief shall include a statement that  
107 the sentenced defendant has the right to appeal within 30 days  
108 after the order denying relief is entered.

109 (c) The sentenced defendant may file a motion for  
110 rehearing of any order denying relief within 15 days after  
111 service of the order denying relief. The time for filing an  
112 appeal shall be tolled until an order on the motion for  
113 rehearing has been entered.

114 (d) The clerk of the court shall serve on all parties a  
115 copy of any order rendered with a certificate of service,  
116 including the date of service.

117 (4) Preservation of evidence.--

118 (a) Governmental entities that may be in possession of any  
119 physical evidence in the case, including, but not limited to,  
120 any investigating law enforcement agency, the clerk of the  
121 court, the prosecuting authority, or the Department of Law  
122 Enforcement shall maintain any physical evidence collected at

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123 the time of the crime for which a postsentencing testing of DNA  
124 may be requested.

125 (b) Except for a case in which the death penalty is  
126 imposed, the evidence shall be maintained for at least the  
127 period of time a person is incarcerated for the crime in  
128 connection with which the evidence was collected ~~set forth in~~  
129 ~~subparagraph (1)(b)~~1. In a case in which the death penalty is  
130 imposed, the evidence shall be maintained for 60 days after  
131 execution of the sentence.

132 (c) A governmental entity may dispose of the physical  
133 evidence before the expiration of the period of time set forth  
134 in paragraph ~~(1)~~(b) if all of the conditions set forth below are  
135 met:

136 1. The evidence must be returned to its rightful owner or  
137 is of such a size, bulk, or physical character as to render  
138 retention impracticable.

139 2. The governmental entity takes reasonable measures to  
140 remove and preserve portions of the material evidence sufficient  
141 to permit future DNA testing.

142 ~~3.1-~~ The governmental entity notifies all of the following  
143 individuals of its intent to dispose of the evidence: the  
144 sentenced defendant, any counsel of record, the prosecuting  
145 authority, and the Attorney General.

146 ~~4.2-~~ The notifying entity does not receive, within 180 ~~90~~  
147 days after sending the notification, ~~either~~ a copy of a petition  
148 for postsentencing DNA testing filed pursuant to this section ~~or~~  
149 ~~a request that the evidence not be destroyed because the~~

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150 ~~sentenced defendant will be filing the petition before the time~~  
151 ~~for filing it has expired.~~

152 5.3- No other provision of law or rule requires that the  
153 physical evidence be preserved or retained.

154 (5) DNA identification of missing persons.--Each  
155 governmental entity in possession of any physical evidence in  
156 the case of a missing person or unidentified human remains shall  
157 be required to submit the DNA profiles obtained from the  
158 evidence to the National Missing Persons DNA Database of the  
159 Federal Bureau of Investigation.

160 (6) System for reporting petitions.--

161 (a) The Attorney General shall establish a system for  
162 reporting and tracking petitions filed in accordance with this  
163 section.

164 (b) In operating the system established under paragraph  
165 (a), the state courts shall provide to the Attorney General any  
166 requested assistance in operating such a system and in ensuring  
167 the accuracy and completeness of information included in that  
168 system.

169 (c) Not later than 2 years after the date of enactment of  
170 this act, the Attorney General shall submit a report to the  
171 Legislature that lists each petition filed under this section  
172 and the following information about each petition:

173 1. Whether DNA testing was ordered.

174 2. Whether the applicant obtained relief on the basis of  
175 DNA test results.

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176 3. Whether further proceedings occurred following a  
177 granting of relief and the outcome of such proceedings.

178 Section 3. Effective July 1, 2005, section 925.12, Florida  
179 Statutes, is created to read:

180 925.12 Florida Commission on Innocence.--

181 (1) As used in this section, the term "exoneration"  
182 includes any case in which:

183 (a) The courts of this state or the Board of Executive  
184 Clemency have made a postconviction determination of actual  
185 innocence;

186 (b) Postconviction DNA testing has led to a conviction  
187 being vacated, an indictment being dismissed, or an acquittal  
188 upon retrial;

189 (c) A conviction has been reversed and vacated, an  
190 indictment dismissed, or a defendant was subsequently acquitted  
191 based on new evidence of innocence or other constitutional  
192 violation that calls into question the integrity of the judicial  
193 process; or

194 (d) Any other postconviction vacation of conviction or  
195 dismissal of indictment that the Florida Commission on Innocence  
196 feels is appropriate to investigate.

197 (2)(a) The Florida Commission on Innocence is hereby  
198 created.

199 (b) The commission shall be composed of 12 members. The  
200 Chief Justice of the Supreme Court shall appoint one member, who  
201 will be the commission's presiding officer. The presiding  
202 officer shall appoint two members of the general public who do

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203 not have any legal, law enforcement, criminal justice, or  
204 forensic science background from a pool of applications  
205 submitted by members of the general public. The presiding  
206 officer shall also appoint two members of the academic  
207 community, one specializing in criminal justice and one  
208 specializing in forensic science. One member shall be appointed  
209 by the Florida Public Defenders Association. One member shall be  
210 appointed by the Florida Prosecuting Attorneys Association. The  
211 Criminal Courts Steering Committee shall appoint one member, who  
212 shall have experience in the judiciary or be a certified court  
213 mediator or arbitrator. One member shall be appointed by The  
214 Florida Bar. One member shall be appointed by the Governor. One  
215 member shall be appointed by the chair of the Democratic Caucus  
216 of the House of Representatives. One member shall be appointed  
217 by the chair of the Republican Caucus of the House of  
218 Representatives.

219 (c) Each member shall serve a 2-year term.

220 (3)(a) The commission shall thoroughly investigate:

221 1. All postconviction exonerations, including convictions  
222 vacated based on a plea to time served, to:

223 a. Ascertain what errors or defects, if any, occurred in  
224 the investigation, prosecution, defense, or judicial  
225 administration of the case that led to the wrongful conviction.

226 b. Identify errors and defects in the criminal justice  
227 process in the state generally.

228 c. Develop solutions to correct the identified errors and  
229 defects.

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230 d. Identify procedures and programs to prevent future  
231 wrongful convictions.

232 2. Any colorable allegations that an innocent person has  
233 been executed.

234 (b) The commission shall determine meeting frequency,  
235 place, and protocol, except that the commission shall not meet  
236 less than once per quarter.

237 (c) The commission may enter contracts for research  
238 services it considers necessary to complete the investigation of  
239 a particular case, including forensic testing and autopsies.

240 (d) The commission may administer oaths and issue  
241 subpoenas signed by the presiding officer to compel the  
242 production of documents and attendance of witnesses considered  
243 necessary to an investigation. A commission subpoena shall be  
244 served as provided in s. 48.031. On application of the  
245 commission, a circuit court shall compel compliance with a  
246 subpoena in the same manner as for circuit court subpoenas.

247 (4)(a) The commission shall compile a detained annual  
248 report of its findings and recommendations, including any  
249 proposed legislation to implement procedures and programs to  
250 prevent future wrongful convictions, and present the report to  
251 the Chief Justice of the Supreme Court, the chair of the  
252 Democratic Caucus of the House of Representatives, and the chair  
253 of the Republican Caucus of the House of Representatives.

254 (b) The report shall be available to the public upon  
255 request.

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256 (c) The findings and recommendations contained in the  
257 report may not be used as evidence in any subsequent civil or  
258 criminal proceeding.

259 (d) Not later than the 60th day after the date of receipt  
260 of the report required by this subsection, the Chief Justice of  
261 the Supreme Court, the chair of the Democratic Caucus of the  
262 House of Representatives, and the chair of the Republican Caucus  
263 of the House of Representatives, singly or jointly, shall  
264 respond to the commission in writing concerning the findings and  
265 recommendations in the report.

266 (e) The report and the responses may be used by the  
267 commission to request appropriate legislation or court rule as  
268 required.

269 (5)(a) The commission shall receive an annual  
270 appropriation to cover copying, mailing, and meeting expenses;  
271 expert travel expenses and consulting fees; and contractor  
272 services for administrative or research needs.

273 (b) Commission members shall donate their time, energy,  
274 and expertise. Expenses for per diem and travel by commission  
275 members may be reimbursed as provided in s. 112.061.

276 (6) The initial appointments to the commission shall be  
277 made no later than 60 days after the effective date of this  
278 section.

279 Section 4. Except as otherwise provided herein, this act  
280 shall take effect upon becoming a law. The repeal of Rule 3.203,  
281 Florida Rules of Criminal Procedure, in this act shall take

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282 effect only if this act is enacted by a two-thirds vote of the  
283 membership of each house of the Legislature.

284  
285 ===== T I T L E A M E N D M E N T =====

286 Remove lines 2-5 and insert:

287  
288 An act relating to criminal law; repealing Rule 3.203,  
289 Florida Rules of Criminal Procedure, relating to  
290 imposition of the death penalty; amending s. 925.11, F.S.;  
291 revising requirements for petitions for examination of  
292 evidence and postconviction DNA testing; requiring entry  
293 of DNA profile information into a national DNA index  
294 system; revising requirements for retention of DNA  
295 evidence; providing additional requirements for disposal  
296 of physical evidence; providing for DNA identification of  
297 missing persons; requiring a system for reporting and  
298 tracking specified motions; requiring a report; creating  
299 s. 925.12, F.S.; creating the Florida Commission on  
300 Innocence; defining the term "exoneration"; providing  
301 membership; providing terms of office; providing powers  
302 and duties; providing for a report and responses;  
303 providing for an annual appropriation to cover expenses;  
304 providing a deadline for initial appointments; providing  
305 effective dates.

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